(1) Supreme Court, U.S.
FILED

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No. _____

In The
UNITED STATES SUPREME COURT

October Term, 1999

Charles Shirley, Larry Bouldes, Jimmie A. Shirley and Willie Bouldes, *Petitioners*,

vs.

Christian Episcopal Methodist Church, *Respondent*.

On Petition for Writ of Certiorari to the
Supreme Court of Mississippi

PETITION FOR WRIT OF CERTIORARI

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22 pp

QUESTIONS PRESENTED

1. Under the First Amendment to the United States Constitution, in adjudicating church property disputes, may state courts hold or create presumptive rules that implied trusts created under ecclesiastical laws and doctrines are to be given greater weight than the language in deeds, local church charters and state statutes?

2. Is such a rule or presumption consistent with mandates of prior precedent of this court, *e.g. Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* and *Jones v. Wolf*?

3. Is such a rule or presumption violative of the "free exercise" or "establishment " clauses of the First Amendment?

LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below, as required by Rule 24.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States.

1. Charles Shirley, Larry Bouldes, Jimmie Shirley, Willie Bouldes, Defendants/Appellants/Petitioners;
2. Christian Episcopal Methodist Church, Plaintiff/Appellee/Respondent;
3. Gary Street Goodwin, Attorney for Defendants/Appellants/Petitioners;
4. H. H. Hal McClanahan, III and Randolph Walker, Attorneys for Plaintiff/Appellee/Respondent;
5. *Amici Curiae* in the Mississippi Supreme Court:
   (a) General Counsel of Finance and Administration of the United Methodist Church;
   (b) The Mississippi Annual Conference of the United Methodist Church;
   (c) The Stated Clerk of the General Assembly of The Presbyterian Church (U.S.A.);
   (d) The United House of Prayer for All People of the Church on the Rock of the Apostolic Faith;
   (e) The Presbyter of the Presbytery of Saint Andrew; and
   (f) The Seventh-Day Adventist Church.
6. Thomas E. Starnes and Irene Howard, Attorneys for *Amici Curiae*.

No. _____

In The
UNITED STATES SUPREME COURT
October Term, 1999

Charles Shirley, Larry Bouldes, Jimmie A. Shirley and Willie Bouldes, Petitioners,

vs.

Christian Episcopal Methodist Church, Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Mississippi

OPINIONS BELOW

The opinion of the Mississippi Supreme Court is reported at 748 So. 2d 672. It is reprinted in its entirety in the Appendix.

JURISDICTION

This court has jurisdiction to review the above decision rendered on September 16, 1999, rehearing denied on January 13, 2000, pursuant to Writ of Certiorari under 28 U.S.C. § 1257.

STATEMENT

After a schism between petitioners and respondent, in which petitioners withdrew from respondent, the Mississippi Supreme Court, in allegedly applying " ' neutral principles of law, developed for use in all property disputes....' *Presbyterian*

Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed. 2d 658 (1969)" *Shirley v. Christian Methodist Episcopal Church,* 748 So. 2d 672, 677 (Waller, Justice, dissenting) placed an undue emphasis or created a presumption that prior adherence to church doctrine by petitioners, and the creation of an implied trust in the church "Book of Discipline" would control over specific language in the deed to the church property.

(FACTS)

The facts of this action are fairly set forth in the opinion of the lower court. In this discussion, the petitioners will refer to themselves as "Cross Roads" or "the local church" and will refer to respondent as "CME" or "the connectional church" or "mother church". The essential facts are as follows.

On February 10, 1947, 1.4 acres of land in Lowndes County, Mississippi was conveyed from R.L. Poole and Delphia J. Poole to "J.E. Spruill, Charlie Bryant, Jessie Shirley and N.L. Poole, Trustees
of the Cross Roads Colored Methodist Episcopal Church and their successors and assigns." 748 So. 2d 672 at 674. At the time of the deed, respondent was known as the "Colored Methodist Episcopal Church", but later changed its name to more adequately reflect the diversity of its membership. The earliest documentary evidence produced at trial by respondent was a "Book of Discipline" published in 1948 as a revision to a 1946 edition. The "Book of Discipline" revised and published in 1994 was also introduced into evidence. The pertinent parts of these doctrines instruct that (1) it is the law of the church; (2) the church is a connectional church; (3) all properties must be conveyed to the connectional church using language appropriate to convey the property to the church corporation, which at times was organized as a non-profit corporation under the laws of the

District of Columbia or the State of Tennessee; and (4) provided that, in the event of a failure of such terms of conveyance, that local church trustees held the local property, in any event, as trustees for the connectional church.

In 1996, a doctrinal dispute developed between Cross Roads and CME. The doctrinal dispute was not substantially inquired to at trial except that the CME noted that Cross Roads wanted to "worship like Baptists". Cross Roads then began to reject the assigned CME ministers and stopped paying their annual dues to the mother church. The local trustees of Cross Roads had always been elected by majority vote of the congregation. Under the "Book of Discipline" these trustees must have been approved and accepted by the appropriate hierarchical body within the governing body of CME. When the schism developed, the local membership and its trustees voted to "disconnect" from the CME. CME took the position that this "disconnect" resulted in a vacancy in the offices of trustees of the local church, and proceeded under its "Book of Discipline" or *ecclesiastical law*, to appoint new trustees who were not members of the congregation at Cross Roads. Thus, CME claimed it was the true "owner" of the 1.4 acres and church building in which Cross Roads worshiped.

Understandably, Cross Roads took exception to this notion, claiming ownership remained in the local trustees under the language in the original deed. The chancellor in the lower court found for CME on this point and also found that the "Book of Discipline" created am implied trust in the ownership of the property for CME. Aggrieved, Cross Roads appealed to the Mississippi Supreme Court. A 5-3 majority of that court affirmed the chancellor.

Although it may appear at first glance that this case involves only the rights of a small number, the issues presented are incredibly important if government separates church and state and allows the free exercise of religion.

THIS COURT SHOULD GRANT CERTIORARI TO REJECT THE MISSISSIPPI SUPREME COURT'S APPROACH OF THE PRESUMPTIVE RULE THAT IMPLIED TRUSTS CREATED UNDER ECCLESIASTICAL LAW ARE GIVEN GREATER WEIGHT THAN THE LANGUAGE IN DEEDS, LOCAL CHURCH CHARTERS AND STATE STATUTES

It is abundantly clear that in the case *sub judice* that the Mississippi Supreme Court superimposed the ecclesiastical law developed by CME over the required neutral principles of law to determine this property dispute. By use of the ecclesiastical law, the Mississippi Supreme Court determined that the church property belonged to the CME. A neutral approach under the common law would have triggered an analysis of (1) looking to the plain language of the deed, and, if ambiguity was found therein, (2) analyzing *parol* evidence to resolve ambiguity. The Mississippi Supreme Court's approach is inconsistent with the First Amendment.

If the Mississippi Supreme Court has created a rule or presumption as set forth above, the same is not consistent with prior mandates of this court in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed. 2d 658 (1969) and *Jones v. Wolf,* 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed. 2d 775 (1979). The substitution of the trustees as a title theory employed by the Mississippi Supreme Court is in fact, a doctrinal interpretation. Cross Roads took the position that it worshiped under a doctrine of continued local control of the church property, consistent with the language in the deed, despite the doctrine of the CME and despite the fact that Cross Roads may have in its history always embraced all other doctrines of the CME. Legislative or judicial decisions which

require a local church to *adhere* to mother church doctrine or law would be, *per se*, violative of both the free exercise and establishment clauses of the First Amendment.

The granting of *certiorari* in this case will give this court the occasion to clearly dispose of issues unresolved after its decisions in *Presbyterian Church* and *Jones v. Wolfe*, *supra*. Those unresolved issues are the weight and credence given to the language of deeds, local church charters, state statutes and constitutional provisions of hierarchical or connectional churches. It is abundantly clear in the case *sub judice* that the Mississippi Supreme Court either created an unconstitutional presumption or, in the final analysis, did not "...take special care to scrutinize the document[s] in purely secular terms, and not (to) rely on religious precepts..." *Jones v. Wolf*, *supra* at 604.

CONCLUSION

Since the final judgment rendered by the Mississippi Supreme Court determines a title, right, privilege or immunity claimed by petitioners under the First Amendment to the Constitution of the United States, this court should grant a writ of certiorari to review the decision of the Mississippi Supreme Court pursuant to 28 U.S.C.A. § 1257.

Respectfully submitted,

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No. _____

In The
UNITED STATES SUPREME COURT

October Term, 1999

Charles Shirley, Larry Bouldes, Jimmie A. Shirley and Willie Bouldes, Petitioners,

vs.

Christian Episcopal Methodist Church, Respondent.

APPENDIX "A"

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Appendix A

IN THE SUPREME COURT OF MISSISSIPPI

No. 98-CA-00587-SCT

CHARLES SHIRLEY, LARRY BOULDES, JIMMIE A. SHIRLEY AND WILLIE BOULDES

Plaintiff-Appellee,

V.

CHRISTIAN EPISCOPAL METHODIST CHURCH

Defendant-Appellant.

Appeal from the Chancery Court of Lowndes County, Mississippi

Before PITTMAN, P.J., McRAE AND SMITH, JJ.

STATEMENT OF THE CASE

¶1. This is an appeal from an action filed in the Chancery Court of Lowndes County, Mississippi. The Christian Methodist Episcopal Church ("CME") filed an action against Charles Shirley, Larry Bouldes, Jimmie A. Shirley, and Willie Bouldes ("trustees") as trustees for the Cross Roads CME Church ("Cross Roads") seeking a determination that the 1.4 acre parcel of land upon which Cross Roads sat belonged to CME as well as other relief. The trustees answered the complaint and

counterclaimed. CME then filed an answer and amended complaint.

¶2. The case was tried before the chancellor on January 30, 1998. The chancellor delivered her opinion on March 5, 1998, concluding that title to the property belonged to CME. Judgment was entered to that effect, dismissing the trustees' counterclaim. The trustees have appealed to this Court.

STATEMENT OF FACTS

¶3. This is an appeal from the Chancery Court of Lowndes County, Mississippi, where CME filed an action against the trustees of Cross Roads CME Church seeking a determination that the 1.4 acre parcel of land upon which Cross Roads sits belonged to CME. CME also sought a declaration of ownership of certain personal property of Cross Roads, together with injunctive relief for possession of all of said property, and to enjoin the trustees to allow CME's appointed ministers to preach and conduct services without interference. The trustees counterclaimed, asserting that title to the property vested in them as trustees of Cross Roads according to the language of the deed. The trustees also sought to enjoin CME, its agents, ministers, associates and bishops from trespassing upon the property owned by Cross Roads.

¶4. CME then filed an amended complaint, advancing the theory that because the trustees (the Shirleys and the Bouldes) had been removed by CME, the new trustees appointed by the CME for Cross Roads would succeed to the title to the property described in the deed.

¶5. Cross Roads, the local church at issue, was founded sometime prior to 1947, with the current church being moved to its present location in 1947. The trustees admitted at trial that Cross Roads had always been a CME church.

¶6. At the center of this conflict is a deed recorded on February 10, 1947, in Lowndes County, Mississippi. The deed shows the conveyance of a parcel of land, 1.4 acres, from R. L. Poole and Delphia J. Poole to "J. E. Spruill, Charlie Bryant, Jessie Shirley, and N. L. Poole, Trustees of the Cross Roads Colored Methodist
Episcopal Church and their successors and assigns."

¶7. In 1996 a dispute arose between Cross Roads and CME. Several members of the congregation at Cross Roads, including the trustees, became dissatisfied with CME and the ministers appointed by CME to serve Cross Roads. Cross Roads voted not to pay the annual assessment to CME that year. This was the first time Cross Roads had failed to pay the assessment. Cross Roads then voted to dismiss the CME-appointed minister and to withdraw from CME.

¶8. The case was tried before the chancellor on January 30, 1998. The chancellor delivered her opinion on March 5, 1998, stating that title to the property belonged to CME. The chancellor also ordered that all personal property, including bank accounts, be turned over to CME and that the trustees were restrained and enjoined from interfering with CME's use of the property. The trustees have appealed to this Court for relief.

STATEMENT OF THE ISSUE

I. WHETHER THE CHANCELLOR ERRED IN DETERMINING THAT THE CHURCH BUILDING AND PROPERTY BELONGED TO THE HIERARCHICAL CHRISTIAN METHODIST EPISCOPAL CHURCH AND NOT TO THE LOCAL CONGREGATION.

STANDARD OF REVIEW

¶9. A limited standard of review is employed by this Court in reviewing decisions of a chancellor. ***Reddell v. Reddell,*** 696 So.2d 287, 288 (Miss. 1997) (citing ***Carrow v. Carrow,*** 642 So.2d 901, 904 (Miss. 1994)). Findings of a chancellor will not be disturbed on review unless the chancellor was manifestly wrong, clearly erroneous, or
applied a wrong legal standard. ***Id.***

DISCUSSION OF LAW

I. WHETHER THE CHANCELLOR ERRED IN DETERMINING THAT THE CHURCH BUILDING AND PROPERTY BELONGED TO THE HIERARCHICAL CHRISTIAN METHODIST EPISCOPAL CHURCH AND NOT TO THE LOCAL CONGREGATION.

¶10. The trustees assert that the chancellor erred in determining that the church building, real property, and tangible and intangible personal property of Cross Roads belongs to CME. The chancellor granted CME immediate title, use and possession of the church property, both real and personal. The chancellor then granted CME possession of the books, registry, bank accounts and all personal property of the Cross Roads church, with said property to be returned within five (5) days of the Final Decree. The chancellor also enjoined the trustees (Shirleys and Bouldes) from interfering with CME's use of both the real and personal property of CME.

¶11. This Court is constitutionally restrained in deciding church property disputes. While state courts can decide the question of church property ownership, the first amendment to the United States Constitution limits the role these courts can play in resolving those disputes. ***Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.***, 716 So.2d 200, 204 (Miss. 1998) (citing ***Jones v. Wolf***, 433 U.S. 595, 602, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979)). As long as it is not required to interpret doctrinal matters, the court is allowed to decide the issue of property ownership. ***Id.*** at 205.

¶12. In ***Church of God Pentecostal, Inc.***, this Court adopted the neutral approach in solving church property disputes. ***Id.*** at 206. The "neutral principles of law" method relies on objective concepts of trust and property law in determining property disputes. There must be a "... secular examination of deeds to the church property, state statutes and existing local and general church constitutions, by-laws, canons,

Books of Discipline and the like to determine whether any basis for a trust in favor of the general church exists." ***Id.*** at 205 (quoting ***Protestant Episcopal Church in Diocese of New Jersey v. Graves,*** 83 N.J. 572, 417 A.2d 19, 23 (1980)). This Court went on to note that if the congregation holding the property is a subordinate member of a larger organization in which there are superior ecclesiastical tribunals with the general and ultimate control over the subordinate congregations, a court must enforce the decision of the highest tribunal of the church ruling on a question of discipline. ***Id.*** at 205.

¶13. In ***Church of God Pentecostal, Inc.,*** a national church organization, Church of God Pentecostal, sued a local church, Freewill Pentecostal Church, for injunctive relief, accounting and to quiet title to certain property on which the church was situated. ***Id.*** at 201. Church of God Pentecostal alleged it was the parent denomination and, as such, the rightful owner of the church property. ***Id.*** Church of God Pentecostal argued that because Freewill Pentecostal Church, along with its defrocked minister, were no longer recognized as part of the national organization, they were not entitled to possession, use, or enjoyment of the property. ***Id.*** at 201-02. The chancery court found in favor of Freewill. ***Id.*** at 202.

¶14. This Court affirmed the chancellor's decision. Church of God Pentecostal did not exist as a corporate entity until 1961. We held that Church of God Pentecostal could not have an express interest in the property conveyed in 1958 because Church of God Pentecostal did not exist as a corporate entity in the United States until 1961. ***Id.***

¶15. We then examined the relationship between Church of God Pentecostal and Freewill and determined that Freewill did not comply with the by-laws of Church of God Pentecostal to create a constructive trust. ***Id.*** at 208. Church of God Pentecostal church did not exist as a corporation in Mississippi until 1993. ***Id.*** Freewill had no voice or vote at any conference of Church of God Pentecostal. The congregation never sent the deeds in question to the general office as required by the by-laws. ***Id.*** Further, assessments were sent only sporadically to the general office, with other denominations besides Church of God Pentecostal receiving monies from Freewill as well. ***Id.*** Freewill did not adopt nor abide by the by-laws of Church of God Pentecostal, nor did Freewill purchase or hold the contested realty in trust for Church of God Pentecostal, nor did Freewill's actions evince an intent to be a part of Church of God Pentecostal. ***Id.***

¶16. The facts in ***Church of God Pentecostal, Inc.,*** are similar to those in the case *sub judice*. However, unlike ***Church of God Pentecostal, Inc.,*** there was a clear intent on the part of the local congregation to operate as a part of CME.

¶17. In order to prevail, CME must demonstrate an actual transfer of property from Cross Roads to CME, an express trust, or clear and convincing evidence showing an intent by Cross Roads to create a trust in favor of CME. ***Id.*** at 206. There was no evidence introduced at trial of an actual transfer of property from Cross Roads to CME. Therefore, CME must prove that an express or implied trust exists in favor of CME. In order to establish such a trust, it must be shown that Cross

Roads is and was intended to be a connectional church belonging to CME.

¶18. CME consists of a mother church with subordinate connectional churches. Authority flows from the top of the organization to the bottom, with the Book of Discipline being the ruling body of ecclesiastical law. Any local church affiliating itself with CME must abide by the Book of Discipline. The local church, Cross Roads, must accept the rulings of the church's tribunal in interpreting those matters. ***Church of God Pentecostal, Inc.,*** 716 So.2d at 205.

¶19. Cross Roads has been affiliated with CME for over 50 years and is, in fact, a connectional church of CME. The current pastor, as well as numerous previous pastors testified as to the status of Cross Roads. Also testifying were a past governing bishop and the current bishop. The testimony at trial established, without a doubt, that Cross Roads was established as a CME church.

¶20. During the time Cross Roads has been a connectional church of CME, it has participated in the governing structure of CME by sending delegates to the Annual Conference as well as accepting trustees (including the trustees here) appointed by the General Conference. Cross Roads paid its annual assessment to CME. Cross Roads also accepted and paid pastors assigned to it by CME. Cross Roads accepted Sunday School literature from CME, as well as $1,000.00 when building the current church. It is important to note that when Cross Roads withdrew from CME, the trustees (the Shirleys and Bouldes) became disqualified as trustees and members of CME according to the

Book of Discipline. At the annual conference held in 1997, no one from Cross Roads was nominated for the position of trustee. The Mississippi-South Annual Conference Trustees were appointed by CME to be the trustees of Cross Roads.

¶21. There is no doubt that Cross Roads was established as a CME church. Nor is there any doubt that the operations of Cross Roads during the last 50 years have been conducted as a connectional church of CME. One of the trustees testified at trial that Cross Roads paid its annual assessment to CME, paid the pastors assigned to it by CME, and sent delegates to the conferences. Trustee Shirley also admitted at trial that Cross Roads CME Church is a part of the CME.

¶22. Because Cross Roads has set itself out as a connectional church of CME, it is presumed to have followed the Book of Discipline. An analysis of the portions of the Book of Discipline governing the holding of church property reveals that the property in question has been held in trust for CME by the trustees appointed by the Annual Conference.

¶23. The 1948 Book of Discipline, a revision of the 1946 Book of Discipline, created a Board of Trustees of CME to hold all property, both real and personal, belonging to the local church. There was also a mandate in the Book of Discipline that all deeds to property already being used for church purposes be modified to vest such title in fee simple to CME. All future deeds must contain a clause saying that the property was held in trust for CME.

¶24. The deed in question conveyed of a parcel of land to J.E. Spruill, Charlie Bryant, Jessie Shirley, and N.L. Poole, **Trustees**

of the Cross Roads Colored Methodist Episcopal Church **and their successors and assigns**. The deed, which was already in existence at the time of the publication of the 1948 Book of Discipline, was not modified as required by the Book of Discipline. Because there was no modification of the original deed to conform to the Book of Discipline, we must look at the Book of Discipline in existence at the time of this action.

¶25. The 1994 Book of Discipline states that titles to all property held by local churches are held in trust for CME and are subject to the provisions of the discipline. The property in question was conveyed by deed to the trustees of Cross Roads Colored Methodist Episcopal Church and their successors and assigns. The trustees, although members of the local congregation, are appointed by the CME organization at its Annual Conference. Because the trustees are appointed by CME, it follows that the trustees are holding the property in trust for CME.

CONCLUSION

¶26. Cross Roads was established as a CME church. Over its 50-year existence, Cross Roads has operated according to the Book of Discipline of CME. There has been a clear intent by Cross Roads that it should be considered a part of the CME national organization. As such, Cross Roads is presumed to abide by the Book of Discipline. According to the Book of Discipline, all property held by local churches is held in trust for CME. For these reasons, the judgment of the chancellor is affirmed.

¶27. AFFIRMED.

BANKS, McRAE, SMITH AND COBB, JJ., CONCUR. WALLER, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY SULLIVAN, P.J., AND MILLS, J. PRATHER, C.J., NOT PARTICIPATING.

WALLER, JUSTICE, DISSENTING:

¶28. This Court is limited in its review of church disputes, as the separation of church and state is a basic constitutional provision which should not be taken lightly. This Court may not determine issues of ecclesiastical matters or doctrinal interpretation, but must resolve church property disputes as it would for any other parties, using "neutral principles of law, developed for use in all property disputes..." ***Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church***, 393 U.S. 440, 449 (1969). The majority places undue emphasis on the Book of Discipline of the hierarchal Christian Methodist Episcopal Church ("the CME") in deciding this civil, real property issue. For that reason, I respectfully dissent.

¶29. The Chancellor found that property in dispute was bought and built upon by the Cross Roads congregation and that it was held in trust for the "Cross Roads Colored Methodist Episcopal Church." The trustees of the Cross Roads Church were, at all time prior to this dispute, members of the local congregation. Despite the congregation's apparent membership in the larger, hierarchal CME, the property was never deeded to the CME. Therefore, title remained in the Cross Roads congregation through its trustees. It does not matter that Cross Roads Church was once a member of the CME or that the CME

had adopted a Book of Discipline that required all church property to be deeded to or held in trust for the CME. Under recognized property law, since the CME was never deeded the property, title remains vested in the local congregation. To hold otherwise is to give the CME some higher power to rewrite property law by simply declaring in church doctrine that it owns certain property or that the property is held in trust for its benefit. State law may not be modified by such ecclesiastical doctrines. Therefore, I respectfully dissent.

SULLIVAN, P.J., AND MILLS, J., JOIN THIS OPINION.

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IN THE

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CHARLES SHIRLEY, LARRY BOULDES,
JIMMIE A. SHIRLEY and WILLIE BOULDES,

Petitioners,

v.

CHRISTIAN METHODIST EPISCOPAL CHURCH,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSISSIPPI

RESPONDENT'S BRIEF

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QUESTIONS PRESENTED

1. Under the First Amendment to the United States Constitution, in adjudicating church property disputes, state courts may utilize neutral principles of law to determine that implied trusts may be created by virtue of the hierarchical churches' *Book of Discipline*, interpretations of the language of the deeds, and conduct of the parties and be given greater weight than the language of deeds, there being no local church charter or statutes to the contrary.

2. Such a rule or presumption is consistent with the decision in *Jones v. Wolf*.

3. Such a rule or presumption is not violative of the "free exercise" or "establishment" clauses of the First Amendment.

LIST OF PARTIES

The following is a list of all parties to the proceedings in the court below, as required by Rule 24.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States.

1. Charles Shirley, Larry Bouldes, Jimmy Shirley, Willie Bouldes, Defendants/Appellants/Petitioners;

2. Christian Methodist Episcopal Church, Plaintiff/ Appellee/Respondent;

3. Gary Street Goodwin, Attorney for Defendants/ Appellants/Petitioners;

4. Hal H. H. McClanahan, III, and Randolph Walker, Attorneys for Plaintiff/

5. Appellee/Respondent;

6. Amici Curiae in the Mississippi Supreme Court:

   (a) General Counsel of Finance and Administration of the United Methodist Church;

   (b) The Mississippi Annual Conference of the United Methodist Church;

   (c) The Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.);

   (d) The United House of Prayer of All People of the Church on the Rock of Apostolic Faith;

(e) The Presbyter of the Presbytery of Saint Andrew; and

(f) The Seventh-Day Adventist Church.

7. Thomas E. Starnes and Irene Howard, Attorneys for *Amici Curiae*.

STATEMENT PURSUANT TO RULE 29.6

Respondent, Christian Methodist Episcopal Church, has no parent corporation and no publicly held company owns 10% or more of its stock.

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STATEMENT OF JURISDICTION

The Court does not have jurisdiction to review the above decision rendered on September 16, 1999, rehearing denied on January 13, 2000, pursuant to Writ of Certiorari under 28 U.S.C. § 1257.

Respondent specifically objects to jurisdiction herein pursuant to 28 U.S.C. § 1257. In neither the Chancery Court of Lowndes County, Mississippi, (trial court) nor the Supreme Court of the State of Mississippi (state appellate court) were alleged violations of the First Amendment to the United States Constitution in its free exercise or establishment clauses raised as affirmative defenses pursuant to Mississippi Rules of Civil Procedure Section 12(B) or in the Statement of Issues as specified in Rule 10(b)4 of the Mississippi Rules of Appellate Procedure respectively. Consequently the Petitioner can not raise for the first time these issues on appeal to the United States Supreme Court. Petitioner's Answer to Amended Complaint and Counterclaim in Chancery Court and Statement of Issues as excerpted from the Appellants' Brief to the Mississippi Supreme Court are reprinted in their entirety in the Appendix.

Without waiver of its objection to jurisdiction the Respondent proceeds as hereinafter set forth with its Brief in Opposition.

STATEMENT OF THE CASE

After a schism between the Petitioners and Respondent in November 1996, the Mississippi Supreme Court in *Church of God Pentecostal, Inc. v. Free Will Pentecostal Church of God, Inc.*, 716 So. 2d 200 (1998) adopted the neutral

principles of law as optioned by the United States Supreme Court in *Jones v. Wolf*, 443 U.S. 595, 602, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979) for deciding issues involving title to church property, provided the court was not getting into interpretation of ecclesiastical dogma. Following the neutral principles of law as outlined in *Jones* and adopted in *Pentecostal*, the Mississippi Supreme Court confirmed the title of the Respondent for the reasons set forth in the Opinion.

COUNTERSTATEMENT OF THE FACTS

The facts of this case are stated in the Opinion of the Mississippi Supreme Court. In this response the Petitioners will be referred to as Cross Roads and the Respondent as CME.

Prior to February 10, 1947, Cross Roads had been functioning as a CME church; and on February 10, 1947, a 1.4-acre tract of land in Lowndes County, Mississippi, was conveyed from R. L. Poole and Delphia J. Poole to J. E. Spruill, Charlie Bryant, Jessie Shirley and N. L. Poole, Trustees of the Cross Roads Colored Methodist Episcopal Church and their successors and assigns.

CME is a hierarchical church in which the authority flows from the top to the bottom as an organized system in which all churches are affiliated with the mother church with control being exercised by the presiding bishop to the respective conferences of the church in each of the ten districts of the church.

At all points CME was governed by a *Book of Discipline*, which contained all the rules and regulations governing the mother church and in turn the local churches. The *Book of Discipline* is published every four years.

The 1946 *Book of Discipline* governed the conveyance of land to the trustees of Cross Roads in trust for CME. The 1946 *Book of Discipline* required a certain clause to be inserted in all deeds for CME churches, which was not used in the 1947 deed. The 1947 deed, however, was to the four named individuals as trustees of the Cross Roads Colored Methodist Episcopal Church and their successors and assigns. CME was originally known as Colored Methodist Episcopal Church and later changed its name to Christian Methodist Episcopal Church.

For forty-nine years Petitioners participated fully in all aspects of CME by accepting ministers, attending conferences, paying assessments to conferences, receiving construction funds from CME, receiving literature from CME, and taking part in all CME activities. It is undisputed by the Petitioners' own testimony that at all times, even prior to 1947, Cross Roads had been a CME church.

In 1994 CME changed its *Book of Discipline* to take care of the lack of an express trust provision as mandated by the 1946 *Book of Discipline*.

In 1996 Cross Roads began taking steps to force a schism with CME culminating with a congregational vote on November 20, 1996, to disassociate itself from CME.

Pursuant to Section 515.1(10) of the 1994 *Book of Discipline* the actions of Cross Roads in voting to disassociate from CME caused their automatic removal as Trustees of Cross Roads and Jimmie Shirley individually as a member of Cross Roads.

When the presiding pastor was unable to certify trustees for the July 1997 Quarterly Conference, the presiding bishop pursuant to the authority of Section 515.1(5), Section 601-4 and Section 606.2 of the 1994 *Book of Discipline* appointed the Mississippi-South Annual Conference Trustees as the trustees for Cross Roads.

In reaching its decision the trial court held that the title to the property was held in trust for CME. The principle as established by the *Book of Discipline* of CME, as well as the actions of the Petitioners and the language of the deed vested title in the four persons as the Trustees of Cross Roads CME, a CME church.

The Mississippi Supreme Court following the guidelines specified in *Jones* and enunciated in *Pentecostal* found that in applying these principles of law that the title to Cross Roads had been held in trust at all points in favor of CME by practice of the parties, the language in the 1947 deed as well as the modification by the 1994 *Book of Discipline* to cure the lack of the exact trust clause required in the 1946 *Book of Discipline* and held for CME.

REASONS FOR DENYING THE WRIT

It is abundantly clear in the case at bar that the Mississippi Supreme Court followed the dictates of this Court in *Jones v. Wolf* by applying the neutral principles of law to determine the title to the church property. At no point was there any ecclesiastical conflict or ecclesiastical law as claimed by Cross Roads. Even utilizing the requested neutral approach under common law as requested by Cross Roads, the Mississippi court in all probability would have found for CME, since the language of the deed is expressly clear that title was held in trust by the trustees for Cross Roads Colored Methodist Episcopal Church, a CME church by their own admission. It did not say of Steens, Mississippi, or of Lowndes County, Mississippi. These elements together with the uncontradicted fact that Cross Roads had always been a CME church clearly meant that the property was held in trust, and the trustees could not revoke their office to disassociate themselves from CME taking the property with them contrary to the assertions of Cross Roads in its petition and as mandated by *Pentecostal*. Cross Roads also never produced a document establishing itself as a local or autonomous church nor cited the trial court or Mississippi Supreme Court to any statute validating their claim.

The Mississippi Supreme Court has expressly followed the mandates of this Court set forth in *Wolf*. The substitution of the conference trustees follows the established church policy with regard to its property rights to which Cross Roads had adhered for at least forty-nine years prior to this attempted schism. While Cross Roads may have wanted to worship "just like Baptists," it was a CME church at all points and bound by the doctrine and principles stated by the CME church. One of these principles was that all of the church's property was held in trust for the mother church.

Being a member of CME as Cross Roads admittedly was meant that it accepted the doctrines of CME. It did not get to pick and choose which ones it wanted to keep and which ones it wanted to disobey. No one forced Cross Roads to be a CME church. It chose to be one with full knowledge of what the doctrines and policies of the church were for at least forty-nine years and more.

Under this set of circumstances there is no violation of the free exercise and establishment clauses of the First Amendment in requiring the local church in a hierarchical situation to adhere to the mother church's doctrine. Had Cross Roads elected from the very beginning to be a congregationalist or Baptist-type organization, it is abundantly clear that they would have had no obligations to a mother church. Cross Roads, however, chose to be a CME church.

The granting of certiorari in this case will not do anything further to clarify the existing law established in *Wolf* and followed by the Mississippi Supreme Court in *Pentecostal*. The correct decisions made by the trial court and the Mississippi Supreme Court have given weight and credence to the language of the deed, procedure, the forty-nine years of Cross Roads action and state law with reference to trusts. *See also Sustar v. Williams*, 263 So. 2d 537 (1972); *United Methodist Church, et al. v. St. Louise Crossing Independent Methodist Church*, 276 N.E.2d 916 (1971); *Clay, et al. v. Crawford, et al.*, 183 S.W.2d 797 (1944), and *Mr. Olive Board of Incorporators of the African Methodist Episcopal Church of Fruitland, Inc., et al. v. Mt. Olive African Methodist Episcopal Church of Fruitland, Inc., et al.*, 672 A.2d 679 (Md. 1996).

CONCLUSION

The Mississippi Supreme Court and the trial court have decided this case correctly, no further relief needs to be awarded to Cross Roads assuming that this Court even has jurisdiction and their Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A — ANSWER TO COMPLAINT AND COUNTERCLAIM DATED DECEMBER 29, 1997

IN THE CHANCERY COURT
OF LOWNDES COUNTY, MISSISSIPPI

CAUSE NO. 97-0742

CHRISTIAN METHODIST EPISCOPAL CHURCH

Plaintiff

Vs.

CHARLES SHIRLEY, LARRY BOULDES,
JIMMY A. SHIRLEY AND WILLIE BOULDES

Defendants

ANSWER TO COMPLAINT AND COUNTERCLAIM

Comes now Charles Shirley, Larry Bouldes, Jimmy A. Shirley and Willie Bouldes, Defendants, by and through their attorney, Curtis H. Austin, and file this their Answer and Counterclaim, to-wit:

I.

The Defendants admit to the allegation contained in Paragraph I.

II.

The Defendants deny the allegation contained in Paragraph II.

Appendix A

III.

Defendants deny the allegation contained in Paragraph III, specifically that they were members of or bound by the *Book of Discipline* of other authority of the Christian Methodist Episcopal Church.

IV.

Defendants deny the allegation contained in Paragraph IV.

V.

Defendants deny the allegation contained in Paragraph V.

VI.

Defendants deny the allegation contained in Paragraph VI.

VII.

Defendants deny the allegation contained in Paragraph VII.

VIII.

Defendants deny the allegation contained in Paragraph VIII.

IX.

Defendants deny the allegation contained in Paragraph IX.

Appendix A

X.

Defendants deny the allegation contained in Paragraph X.

XI.

Defendants deny the allegation contained in Paragraph XI.

XII.

Defendants deny the allegation contained in Paragraph XII.

XIII.

Defendants deny the allegation contained in Paragraph XIII.

XIV.

Defendants deny the allegation contained in Paragraph XIV.

XV.

Defendants deny the allegation contained in Paragraph XV.

XVI.

The Defendants deny that the Plaintiff is entitled to any of the relief requested in its pray one through seven.

Appendix A

COUNTERCLAIM

And, now having fully answered the Defendants file this their counterclaim against the Christian Methodist Episcopal Church, to-wit:

I.

Defendants would show the conveyance from H. L. Poole and wife was a deed to the Trusteed, individually, and not in trust for the use and beneficiary of the Christian Methodist Episcopal Church nor its successors or assignees.

II.

Defendants would show further that at no time since has any property been conveyed to the Christian Methodist Episcopal Church and that title remains in the Trustee, indirectly and in their capacity as trustees, elected by the congregation.

III.

Defendants would show, further, that at no time have they or their predecessors in title adopted or passed any resolution officially joining the Christian Methodist Episcopal Church; but, that said has been by voluntary association only.

IV.

Defendants would further show that at no time has the Christian Methodist Episcopal Church contributed to or provided assistance in the construction or maintenance of the

property, but, that all such improvements have been made by the members.

V.

Defendants would show further that they do not have any control over whether or not the members attend, pay due or make other contributions.

VI.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Christian Methodist Episcopal Church, its agent(s), minister(s), associates, or bishops be enjoined from taking any actions against the Defendants in their official or individual capacity.

That title to the property be vested in the duly elected trustees of the Cross Roads Colored Methodist Church, elected by the Church.

That the Christian Methodist Episcopal Church be devested of any claim or color to the real property and titled to the Cross Roads Christian Methodist Episcopal Church.

That the Christian Methodist Episcopal Church, its agent(s), minister(s), associates, or bishops be enjoined from entering upon or trespassing upon the real property owned by the Cross Roads Christian Methodist Episcopal Church.

Appendix A

RESPECTFULLY SUBMITTED this the 29th day of December, 1997.

CHARLES SHIRLEY, LARRY BOULDES, JIMMIE A. SHIRLEY AND WILLIE BOULDES,
Defendants

BY: *CURTIS H. AUSTIN*

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* * *

APPENDIX B — STATEMENT OF ISSUES

IN THE SUPREME COURT OF MISSISSIPPI
NO. 98-CA-00587

CHARLES SHIRLEY, LARRY BOULDES, JIMMIE A. SHIRLEY AND WILLIE BOULDES

Appellants

Vs.

CHRISTIAN METHODIST EPISCOPAL CHURCH

Appellee

STATEMENT OF THE ISSUE

DID THE CHANCELLOR MANIFESTLY ERR AS A MATTER OF LAW IN DETERMINING THAT THE CHURCH BUILDING AND PROPERTY BELONGED TO THE HIERARCHICAL CHURCH, OR SHOULD SHE HAVE DETERMINED THAT IT BELONGED TO THE LOCAL CONGREGATION?